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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/454,774	12/03/1999	BERNARDUS CORNELIS DE BOER	99-0134-UN1	4222

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PATENT DEPARTMENT
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32
EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/454,774

Applicant(s)

DE BOER ET AL.

Examiner

Carolyn A Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2003 and 21 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 23.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

The request filed on January 3, 2003 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/454774 is acceptable and a CPA has been established. An action on the CPA follows.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 7-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hallstrom in view of Joy of Cooking as further evidenced by Carotenoids and Kesharlal.

Hallstrom teaches a butter substitute that contains phytosterol that is made according to the recipe shown at column 13, lines 18-24. At column 10, lines 58-62, the product is then formulated into a margarine product, which was favorably compared with conventional margarine. Thus Hallstrom teaches the preparation of a butter substitute for the "do-it-yourself" cook. Claim 1 appears to

differ from Hallstrom in the recitation of the inclusion of carotene and lycopene in the product. Joy of Cooking discloses carrots in bunches where carrots are steamed or cooked, skinned, reheated and then served by pouring melted butter over the carrots (see page 296). Joy of Cooking does not teach that carrots contain carotene in a particular amount. Evidence for the amount of carotene in carrots is provided by Carotenoids, which shows that carrots contain 1 g of carotene from 1 kg of carrots. It would have been obvious to one having ordinary skill in the art that desired to provide a nutritional, home cooked vegetable, to butter the carrots of Joy of Cooking with the margarine of Hallstrom. In this case the margarine of Hallstrom would have been an obvious low-cost substitute for butter (column 1, lines 25-36). The phytosterol is in a different phase from the carotenes because the carotene is in the carrots and the phytosterol is in the butter substitute. Also one would expect the carotenoids to be present in chromoplasts or chloroplasts because they are utilized as naturally available in the carrots. It is appreciated that lycopene and beta-carotene are not suggested but carrots are known in the art to contain these compounds as evidenced by Kesharlal at column

7, lines 60-67. It is appreciated that the exact food ingredients of claim 13 is not shown in Joy of Cooking but to comminute a cooked carrot in order to prepare baby food or in order to prepare a food product for someone who cannot chew is an obvious way to serve a food. Also carrots are well known in the art as a vegetable component in a main meal.

Applicant urges that a special format of carotenoids. This has been considered but is not persuasive because no difference is seen between the claimed product and that of the references. Applicant urges that the rejection employs hindsight. This is disagreed with. Alternatives to butter, like Hallstrom, are available and known in the art. To use the product of Hallstrom in a cooking recipe would be obvious to one of ordinary skill in the art.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A. Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7 am to 3:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


CAROLYN PADEN 9-11-03
PRIMARY EXAMINER
GROUP 1300 1761